HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE MS. JUSTICE J. UMA DEVI

W.P NO. 19442 OF 2017

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

Challenge in this writ petition is to the action of the ICICI Bank Limited in taking physical possession of the property bearing No. B-52 being a plot of land with a shed therein, situated at Assisted Private Industrial Estate, Balanagar, Hyderabad, belonging to the petitioner firm, on 12.6.2017 on the ground that it was without the authority of law.

Though the prayer in the writ petition includes another property bearing No. B-53 situated in the same location, Sri Vedula Venkataramana, learned Senior Counsel representing Sri Sharad Sanghi, learned counsel for the petitioner, would fairly concede that the challenge in this writ petition does not extend to the said property and by inadvertence, the said property was also included in the prayer.

Sri Vedula Venkataramana, learned Senior Counsel, would contend that the ICICI Bank Limited, having secured an order under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"), failed to take possession pursuant thereto and independently secured possession of the subject property by forcible means through its Authorised Officer. Perusal of the counter-affidavit filed by the ICICI Bank Limited bears out this fact. In para-3 (j) thereof, the Authorised Signatory of the ICICI Bank admitted that an Advocate-Commissioner was appointed pursuant to the order dated 31.1.2017 passed by the learned Chief

Metropolitan Magistrate, Cyberabad, Ranga Reddy district, in Crl.M.P.No. 68 of 2017 but the said Advocate-Commissioner failed to execute the warrant and did not deliver possession of the subject property to the ICICI Bank. The Authorised Signatory further admitted that the Advocate-Commissioner's warrant expired on 26.5.2017 and that there was no extension thereof. In para-3 (k) of the counter-affidavit the Authorised Signatory stated as under,

> "……….This Respondent Bank being custodian of the public money, decided to take peaceful physical possession of the schedule properties directly through Authorised Officer in accordance with provisions of the SARFAESI Act and informed the concerned police station prior to taking possession. In fact when the Authorised Officer tried to take physical possession of the schedule property, Mr. Gopal Agarwal, partner of Petitioner firm called around 20 to 30 persons who are very unruly and are looking like Anti-social elements and who started threatening the Authorised Officer. Thereupon, the Authorised Officer has approached the Balanagar police station and Mr. Gopal Agarwal was called to the police station. The police authorities enquired of him as to whether there is any stay from Hon'ble DRT or any other competent Court of law restraining the Authorised Officer from taking possession of the property. On Mr. Gopal Agarwal confirming to the police authorities that there is no stay the police authorities advised him not to indulge in illegal activities by preventing the Authorised Officer from taking possession of the mortgaged properties. Only thereafter Mr.Gopal Agarwal advised all the unruly elements to disperse and authorised officer has taken peaceful possession of the properties. A copy of the letter dated June 12, 2017 submitted by the Authorised

> Officer and duly acknowledged by Balanagar police is filed enclosed. Accordingly, Respondent Bank has taken physical possession of schedule properties through Authorised Officer Mr. Sreedhar Inampudi on June 12, 2017………..."

In para-4 (e) of the counter-affidavit, the Authorised Signatory stated as under,

> "…….Having been left with no other alternative, this Respondent Bank being custodian of public money, had to take possession of the schedule property through its Authorised Officer under Section 13 (4) of Act only after lapse of Advocate Commissioner warrant, with the assistance of Enforcement agency in accordance with provisions of Act."

It is therefore clear from the aforestated counter-affidavit that the ICICI Bank secured possession of the subject property through its Authorised Officer with the assistance of an Enforcement Agency (the police).

Sri R. Raghunandan, learned Senior Counsel representing Sri V. Dharma Suri, learned counsel for the ICICI Bank Limited, was asked to justify this action on the part of the ICICI Bank. The learned Senior Counsel would submit that the scheme of the SARFAESI Act did not bar the Authorised Officer of the ICICI Bank from forcibly taking over possession of the secured asset. However, the learned Senior Counsel was unable to point out any express provision in the SARFAESI Act which enabled him to do so.

On the other hand, the law laid down by the Supreme Court in ***Standard Chartered Bank Vs. Senior Manager, State Bank of India and another*** [1] is clear on this aspect. Para-36 of the said judgment is relevant and reads as under,

> "36. Thus, there will be three methods for the secured creditor to take possession of the secured assets:
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> 36.1. (i) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realise the amounts that are claimed by the secured creditor.
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> 36.2. (ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinize the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14 (1)(A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.
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> 36.3 (iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act. The Magistrate will thereafter scrutinize the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of

[1] (2013) 9 Supreme Court Cases 620

> the assets and documents and forward them to the secured creditor as under Clause 326. (ii) above.
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> 36.4 In any of the three situations, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and sale of the secured assets,, and other subsequent rules from the Security Interest (Enforcement) rules, 2002, shall apply."

In the light of the aforestated interpretation of the statutory scheme by the Supreme Court, it is not open to any secured creditor to claim that it has the authority to resort to a method for securing possession independent of and other than the three methods indicated by the Supreme Court. It was therefore not open to the ICICI bank to resort to unlawful means to secure forcible possession through the Authorised Officer. The bank necessarily had to take resort to the mechanism provided under Section 14 of the SARFAESI Act in the event it met with resistance from the borrower when it wanted to take delivery of possession by issuing a possession notice under Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002.

In the present case, we find that the ICICI bank resorted to a mechanism of its own making for taking forcible possession of the subject property, unknown to the statutory scheme. The Authorised Officer of the ICICI Bank was not a legal authority unto himself to effect such forcible dispossession of the borrower or person in possession of the secured asset. We therefore have no hesitation in holding that the manner in which the ICICI bank went about securing possession of the subject property on 12.6.2017 was completely unlawful and abhorrent to the Rule of Law.

Though we are informed by Sri R. Raghunandan, learned Senior Counsel that the ICICI bank thereafter went about selling the subject property and delivered possession thereof to the auction purchaser, we are not inclined to comment on the validity of such sale as the same is not under challenge before us. Suffice it to say that the delivery of possession to the auction purchaser by the ICICI Bank, if any, would not validate the illegality committed by it in securing possession of the secured asset through unlawful means on 12.6.2017.

The writ petition is accordingly allowed directing the ICICI Bank Limited, respondent Nos. 1 and 2 herein, to restore physical possession of the subject property bearing No. B-52, being a plot of land with a shed therein, situated at Assisted Private Industrial Estate, Balanagar, Hyderabad, to the petitioner within two weeks from the date of receipt of a copy of this order. This order shall however not preclude the ICICI Bank Limited from initiating lawful measures for securing possession of the subject property in accordance with the provisions of the SARFAESI Act.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Dt. 14.12.2017
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J. UMA DEVI, J

NB:
CC of order be furnished in one week.
/BO/
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